IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/10/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Crl.O.P.No.9501 of 2002
and
Crl.M.P.No.4392 and 7880 of 2002

1. Dr.K.Thiruneelakandan
2. Dr.K.P.Natarajan ..... Petitioners

-Vs-

M.Lathamageswari ..... Respondent

Criminal Original Petition filed under section 482 Crl.P.C. for quash as stated therein.

!For Petitioners : Mr.R.Subramanian

^For Respondent : Mr.P.Selvaraj

:ORDER

The petitioners herein who are accused in C.C.No.3839 of 2002 on the file of the Additional Chief Metropolitan Magistrate's Court, Egmore, Chennai have filed this petition under sec.482 Cr.P.C. to call for the records and quash the same.
2. Respondent herein has filed a private complaint in C.C.No.3839 of 2002 against the petitioners for the alleged offences under sections 465, 468, 470, 419, 420 read with 34 IPC.
3. Learned counsel Mr.R.Subramanian appearing for the petitioners submitted as follows:-
The first petitioner purchased a plot measuring 2472 sq.ft. In Sri Venkateswara Nagar, Korattur Village, Chengai District in the name of his minor son Kumaragururajan on 15.2.1996 under a registered document No.465/96. The said land originally belonged to one Damodaran who in turn sold it to one Latha Maheswari under sale deed dated 19.6.199 2. The said Latha Maheswari has executed a registered deed of power of attorney in favour of the second petitioner on 18.1.1996. By virtue of the said deed of power of attorney, the second petitioner has sold the said plot to the first petitioner's minor son. Eversince the date of purchase, the first petitioner is in possession of the said plot. The respondent herein, taking advantage of similarity in her name falsely claimed the same as her property. The respondent herein filed a complaint in M.P.No.4443 of 1997 before the XIII Metropolitan Magistrate's

Court, Chennai against the petitioners for the offences under sec.465, 468, 470, 419 and 430 IPC which was forwarded under sec.156(3) Cr.P.C to the police. The police has registered a case in Crime No.66 of 1998, after investigation referred it as mistake of fact. Suppressing the same the respondent filed Crl.O.P.No.14527 of 2001 before this court for a direction to the police to investigate the matter. This court directed the police to serve a copy of the referred notice to enable her to approach the concerned court by way of private complaint. In the above said Crl.O.P.No.14527 of 2001, the petitioners were not arrayed as respondents, hence, they could not brought to the notice of this court all the facts. Taking advantage of the order passed by this court, the respondent has filed the above said C.C., before the Additional Chief Metropolitan Magistrate Court, Egmore with similar allegations. The respondent has also preferred O.S.No.1840 of 1998 before the City Civil Court, Madras against the petitioners herein and as she felt that no substance in her suit, she has preferred the said private complaint made use of the order of this court to blackmail the petitioners. The petitioners are leading and reputed medical practitioners. The private complaint is vitiated as the earlier complaint was closed as mistake of fact. The learned counsel for the petitioner relied upon the following judgments:-

(i) ALPIC FINANCE LTD. v. P.SADASIVAN ((2001) 3 SCC 513) wherein the Honourable Supreme Court has held in para 5 that

"Contours of the power under section 482 Cr.P.C. Have been explained in a series of decisions by this Court. In Nagawwa V. Veeranna Shivalingappa Konjalgi it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in a conviction of the accused. It was held that the order of Magistrate issuing process against the accused could be quashed under the following circumstances:

"(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

In the above case, the Honourable Supreme Court has held that when complaint and statement of witnesses taken at their face value made out no case the same could be quashed. And further held that merely because remedy by way of civil suit is available is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged.

(ii) MAJOR SINGH v. STATE OF PUNJAB (1986 CRI.L.J. 303) wherein the Punjab and Haryana High Court has held in para 7 that

"Notice of the petition was issued n this case tot he respondentState of Punjab, and the learned counsel for both the parties have addressed the

arguments at considerable length. Obviously, the only point which fals for consideration is, as to whether the criminal court which was seized of the case against the petitioners and which had framed a Charge Sheet against them for various offences relating to acts of impersonation, forgery etc., can proceed with the case, in pite of the final three-tier verdict of the civil courts, culminating with the dismissal of the Regular Second Appeal by this court, on the very points which are the subject matter of the charge Sheet in the criminal case. In this behalf Mr.P.C.Mehta, learned counsel for the petitioners has placed strong reliance on Karamchand Ganga Parshad V. Union of India AIR 1971 SC 1244:(1971 Cri. LJ 1072), wherein it was observed that "It is a well established principle of law that the decisions of the Civil Courts are binding ont he criminal Courts. The converse is not true." In this case, a Division Bench of Delhi High court after elaborately hearing the arguments in a writ petition under Art.22 6 of the Constitution of India, rejected the Writ Petition on the sole ground of that in view of the pendency of the criminal proceedings before some Courts, it would be inappropriate for the High Court to pronounce on the questions arising for decision in the Writ Petition. Their Lordships of the Supreme Court held that the High Court had seriously erred in coming to this conclusion. The appeals were, therefore, allowed by the Supreme Court and the cases were remitted to the High Court, for disposal on merits, with observations which have already been noticed."
In the above case, the Punjab and Haryana High Court has held that when the civil proceedings ended in favour of accused on very points which were subject matter of charge sheet in criminal case, continuance of criminal proceedings is abuse of process of court.

(iii) GOPALAKRISHNA MENON v. D.RAJA REDDY (AIR 1983 SC 1053) wherein the Honourable Apex Court has held in para 7 that
"In view of what we have said above, the prosecution in the instant case on the basis of a private complaint and in the absence of a complaint from the appropriate civil court where the alleged fraudulent receipt has been produced, would not be sustainable. As we are of the view that if the prosecution is allowed to continue serious prejudice would be caused to the appellants and they would be called upon to face a trial which would not be sustainable, we allow this appeal and set aside the decision of the High Court and quash the complaint case filed against the appellants."
In the above case, the Honourable Apex Court has held that in case no complaint by court in which fraudulent money receipt is produced, prosecution at the instance of opposite party is not maintainable.
4. Learned counsel Mr.P.Selvaraj appearing for the respondent submitted as follows:-
The petitioners herein, in order to misappropriate the property of the respondent, has created two documents viz., deed of power of attorney and sale deed by forging the respondent's signature and also by impersonation. The respondent has filed a private complaint on 15.12 .1997 before the XIII Metropolitan Magistrate, Egmore, Chennai against the petitioners herein and the learned Magistrate, after perusing the complaint, directed the Crime Branch to investigate the matter under sec.156(3) Cr.P.C. On 19.1.1998, the said complaint was registered in Crime No.66/98 for offences under sec.465, 468, 470, 419, 429 read with 34 IPC, but, no investigation has been done inspite of several request made by the respondent. In the result, the

respondent filed petition under sec.482 Cr.P.C. in O.P.No.14527 of 2001 before this court and this court, after verifying the necessary records, directed the police to serve a copy of the referred notice on the respondent to enable her to work out her remedy by approaching the concerned court by way of private complaint against the petitioners herein. The respondent is the owner of the property in dispute and she never executed any deed of power of attorney to the second petitioner herein nor authorised him to execute a sale deed and the petitioners by impersonation created the deed of power of attorney with the intention to misappropriate the property. In order to seek the remedy available under civil law, the respondent filed O.S.No.1840 of 1998 to declare that the sale deed and deed of power of attorney which were created fraudulently are null and void and for other remedies. The petitioners herein have not made out any valid ground to quash the complaint filed by the respondent and prayed for dismissal of the present petition. The learned counsel appearing for the respondent relied upon the following judgments:-

(i) KAMALADEVI AGARWAL v. STATE OF WEST BENGAL (2001 AIR SCW 4292) wherein the Honourable Supreme Court has held in para 17 that

"... Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings."

In the above case, the Honourable Apex Court has held that quashing of proceedings at initial stage merely on the grounds that the very foundation of the criminal case is the subject matter of a civil case is unsustainable.

(ii) VITOORI PRADEEP KUMAR v. KAISULA DHARMAIAH (2001 AIR SCW 2286) wherein the Honourable Apex Court has held in para 2 that

"The order of learned Single Judge of Andhra Pradesh High Court passed in Criminal Revision No.602/1999 allowing the revision filed by the accused persons on the ground that the criminal case cannot proceed because of the pendency of a civil suit is the subject matter of the challenge in this Court. As it appears, before the learned Magistrate, an application for discharge was filed, but, the Magistrate was of the opinion that there exist sufficient material to proceed with the criminal case and therefore prayer for discharge was rejected... Moreso, there is an earlier order of the High Court itself. In this view of the matter, we set aside the impugned order of the High Court and direct that the criminal proceedings should be continued. We make it clear that any observation made, will not bind the Magistrate."

In the above case, the Honourable Apex Court has held that quashing of criminal proceedings on the ground that civil suit for specific performance is pending is untenable.

(iii) M.KRISHNAN v. VIJAY SINGH (2001 AIR SCW 4142) wherein the Honourable Supreme Corut has held in para 9 that

"Right from the case of R.P.Kapur V. State of Punjab AIR 1960 SC 866: (1960 CRI LJ 1239), this Court has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which

no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions fo the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."
In the above case, the Honourable Supreme Court has held that when the complaint alleges commission of offence of cheating and fraud, quashing of complaint merely on grounds that nature of dispute was primarily of civil nature is not proper.
(iv)LALMUNI DEVI v. STATE OF BIHAR (2001 AIR SCW 2504) wherein the Honourable Apex Court has held in para 8 that
"There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

In the above case, the Honourable Supreme Court has held that merely because a civil claim is maintainable, it does not mean that criminal claim cannot be maintained.

(v) M/s.MEDCHL CHEMICALS & PHARMA PVT. LTD., v. M/S.BIOLOGICAL E. LTD. (2000 AIR SCW 682) wherein the Honourable Apex Court has held in para 16 that
"Be it noted that in the matter of exercise of High Court's inherent power, the only requirement is to see whether continuance of the proceeding would be a total abuse of the process of Court. The Criminal Procedure Code contains a detailed procedure for investigation, charge and trial, and in the event, the High Court is desirous of putting a stop to the known procedure of law, the High Court must use a proper circumspection and as noticed above, very great care and caution to quash the complaint in exercise of its inherent jurisdiction."
In the above case, the Honourable Apex Court has held that the High Court, while exercising its inherent powers has to see whether continuance of proceedings would be a total abuse of the process of court and the High Court must use its power with very great care and caution before quashing the complaint in exercise of its inherent jurisdiction.

5. Sec.482 Cr.P.C. confers a separate and independent power on the High Court alone to pass orders ex-debito justitiae in cases where grave and substantial injustice has been done or where the process of the Code has been seriously abused. Inherent power conferred on the High Court under section 482 has to be used sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is only when the ends of justice are put in jeopardy by the conduct of the parties, the inherent power can be exercised. A proceeding

initiated on a complaint can be quashed when the complaint taken as a whole does not disclose any offence. In appropriate cases the High Court can exercise inherent powers to protect a person from illegal and vexatious prosecution, but, where the circumstances do not so warrant the High Court should not quash the proceedings in exercise of inherent jurisdiction.

6. The Honourable Supreme Court in R.P.KAPUR v. STATE OF PUNJAB (AIR 1960 SC 866) has indicated some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised as

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. So far as cases other than the categories of the cases mentioned above, the High Court shall refrain from exercising its inherent powers under sec.482 Cr.P.C.

7. In a proceeding instituted on a complaint, exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. When an allegation on a complaint discloses a prima facie case, the process is issued by the Trial Magistrate, quashing of such proceedings is illegal.

8. The allegation in the complaint against the petitioners herein is that the first petitioner herein is the maternal uncle of the respondent herein, during the last week of August 1992, he has induced her to hand over the sale deed in respect of the property in dispute to him enabling him to arrange for loan for the purpose of construction of a building in the said plot for her. It is further alleged that she has entrusted him the original title deeds of the said plot, but, he failed to arrange for loan till the middle of May 1997, she and her husband requested him to return the original sale deed, but, he has been giving evasive reply. The first petitioner has allegedly informed the complainant that the original sale deed was lost. She has approached the Sub-Registrar's office for issuance of encumbrance certificate. The encumbrance certificate issued by the Sub Registrar discloses that a power of attorney was executed in the name of the respondent in favour of the second petitioner herein and the second petitioner allegedly by virtue of the power of attorney, executed sale deed in favour of the first petitioner's minor son. Immediately, she has filed a private complaint before the XIII Metropolitan Magistrate, which was forwarded under sec.156(3) Cr.P.C. to the police, and the police registered a case in Crime No.66/98 for offences under sec.465, 468, 470, 419, 420 read with sec.34 IPC, but, no investigation has been commenced by them, she has filed a petition under sec.482 Cr.P.C for a direction to the police to investigate the case. When the police reported that the case was referred as mistake of fact, but, no referred notice was served on her, this court directed the police to serve refer notice to enable her to file private complaint. The respondent has filed a private complaint before the Additional Chief Metropolitan Magistrate, Egmore, Chennai which was

taken on file and as it is evident that there is sufficient ground for a proceeding and the learned Magistrate has ordered for issuance of summons to the attendance of the petitioners/accused. The respondent also filed a suit before the competent civil court for a declaration to declare that the deed of power of attorney as well as the sale deed both said to have been executed by her is null and void.

9. The learned counsel appearing for the petitioners advanced argument that when a civil proceedings has been initiated, on the said set of facts, a criminal proceedings initiated in a private complaint is unsustainable in law. It is also argued by the learned counsel appearing for the petitioners that when the respondent has also filed a civil suit where she has canvassed the with regard to forgery and impersonation that the deed of power of attorney and sale deed were created by the petitioners, the civil court is the competent court to file a complaint, as such the private complaint initiated by the respondent is not maintainable.

10. In GOPALAKRISHNA MENON v. D.RAJA REDDY (AIR 1983 SC 1053), the money receipt alleged to have been forged was produced before the civil court, but, the same court has not chosen to give a complaint as contemplated under sec.195(1)(b)(ii) of Cr.P.C., but, the private complaint has been initiated by the other side. The Honourable Apex Court has held that the same is unsustainable in law since no complaint has been preferred by the court. This judgment is not applicable to the facts and circumstances of the present case since no such document was produced by the petitioners herein during the pendency of the civil suit to attract sec.195(1)(b)(ii) of Cr.P.C. The argument of the learned counsel for the petitioners that when a civil suit is already filed, such a criminal complaint is not maintainable is also unsustainable in law. In ALPIC FINANCE LTD. v. P.SADASIVAN ((2001) 3 SCC 51 3) relied on by the learned counsel appearing for the petitioner, the facts in that case were that a person who availed a loan failed to repay the same as per the lease agreement. The Honourable Supreme Court has held that on facts, the complaint does not disclose the element of deception or fraud or dishonest inducement or wilful misrepresentation in the entire transaction and ultimately quashed the complaint, hence the said judgment is not applicable to this case. In MAJOR SINGH v. STATE OF PUNJAB (1986 CRI. LJ 303) criminal action was initiated for various offences relating to acts of impersonation, forgery, etc. against the accused in spite of final three tier verdict of civil courts culminating with the dismissal of regular second appeal on the very points against the complainant. The remedy sought for by the respondent before the Trial Court is to declare that the deed of power of attorney as well as the sale deed is null and void which suit is pending. But, the criminal proceedings are initiated by her for the alleged offences under sec.465, 468, 470, 419, 420 read with sec.34 IPC. In a criminal court, the allegations made in the complaint have to be established independently. Hence, this judgment is not applicable to the present case.

11. Even the judgment relied on by the counsel for the petitioner reported in (2001) 3 SCC 513 cited supra, the Honourable Supreme Court has laid down the ratio that merely because remedy by way of civil suit is available is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged. So, now we have to look into whether the complaint filed by the respondent discloses the alleged offences or not. It is not the case of the petitioners that the

complaint does not discloses the ingredients of the offences alleged, but, only canvassed that the present complaint is vitiated as the earlier complaint was closed and suit for the same relief is filed. The respondent has stated valid reasons for filing the present complaint that the police has failed to investigate the matter.

12. On a careful reading of the complaint, I am of the view that the complaint preferred by the respondent herein discloses the ingredients of the alleged offences under sec.465, 468, 470, 419, 420 read with sec.34 IPC. However, it is for the Trial Court to decide whether or not the allegations in the complaint are otherwise correct on the basis of the evidence to be lead at the time of Trial. I am not inclined to exercise the power under sec.482 Cr.P.C.

13. In the result, this petition is dismissed without expressing any opinion on merits of the case. The learned Magistrate shall proceed with the complaint and dispose of the same in accordance with law without taking into account any observation made by me.

Index: Yes.
Internet: Yes.
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To

The Additional Chief Metropolitan
Magistrate,
Egmore,
Chennai.